



**Staff Report  
Mount Airy Planning Commission  
March 28, 2022**

**Rezoning Request  
2023 Master Plan Update**

**PROPERTY:** 806 Park Avenue

**OWNER:** Michal OBrien  
806 Park Avenue  
Mount Airy, Maryland 21771

**APPLICANT:** Michal OBrien  
806 Park Avenue  
Mount Airy, Maryland 21771

**REQUEST:** The applicant is requesting a zoning change from R-3- Residential zoning to CC-Community Commercial

**PROJECT INFORMATION:**  
**ADDRESS/LOCATION:** 806 Park Avenue, Mount Airy, Maryland 21771  
**COMP. PLAN:** Residential R-3 "zoning"  
**WATER/SEWER:** W-1/S-1 Existing/Final Planning

**HISTORY / BACKGROUND:**

806 Park Avenue (35,152 sq. ft.) – located at the corner of Park Avenue and Ridge Road MD. Rt. 27, the current zoning of the property is R-3.

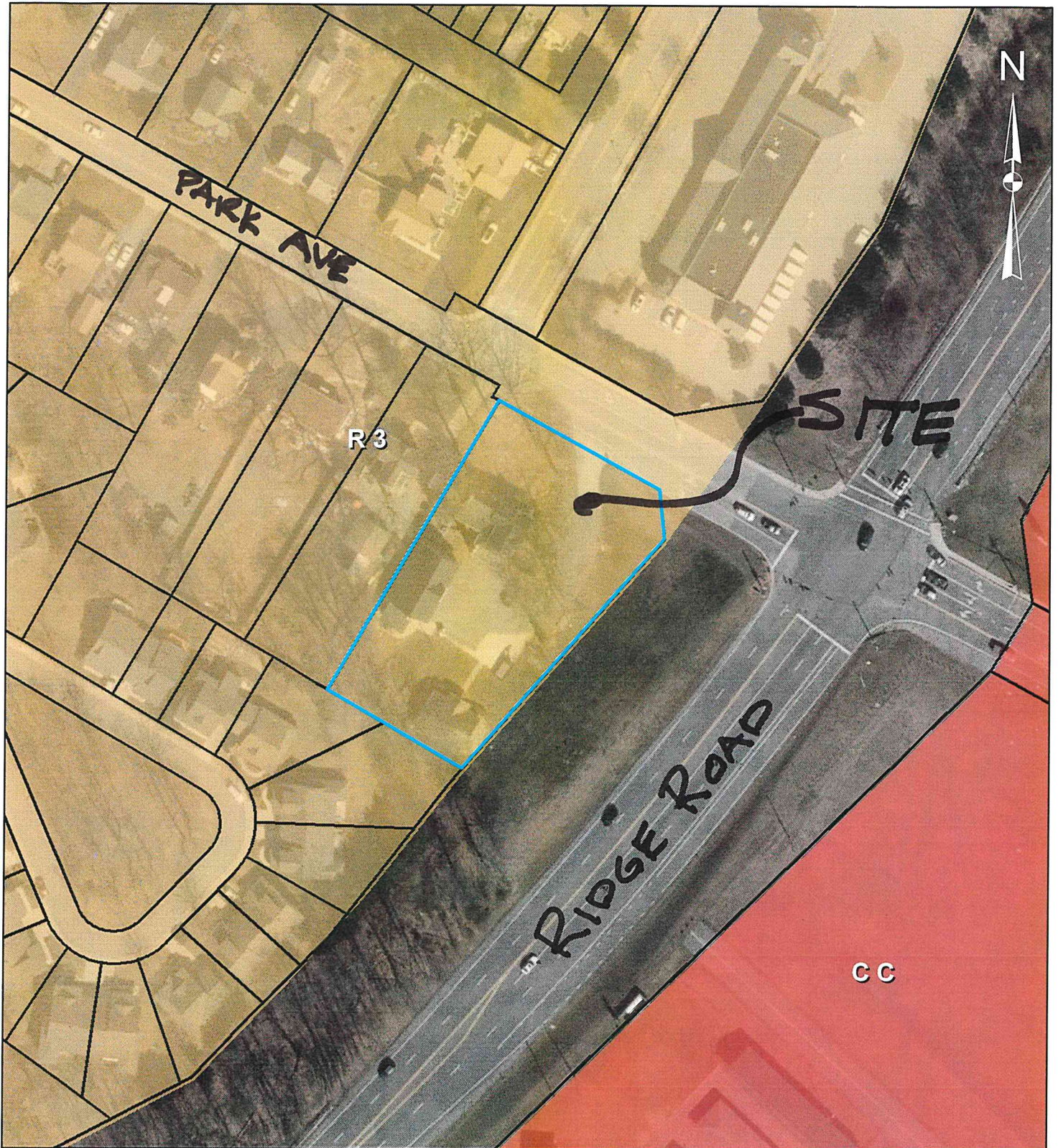
The applicate Dr. Michel Obrien has been operating his veterinarian business from this location since 1987. Dr. OBrien did request a rezoning to CC-Community Commercial back in the 2013 Master Plan update. His request was opposed by the surrounding citizens and did not receive a favorable recommendation or the rezoning. See attached letter from an owner on Park Avenue about this proposed rezoning request.

This parcel is on the west side of Ridge Road directly across from the Mount Airy Fire Company carnival grounds which is a CC-Community Commercial zoned property. The United States Post office is on the opposite side of Park Avenue which is zoned R-3.

**Staff recommendation:**

The staff is not recommending the rezoning of this parcel currently. If this property is rezoned in the future, the zoning of NP – Neighborhood Professional should be considered.





**806 Park Avenue**

0 37.5 75 150 Feet  
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**Legend**

**Zoning\_MtAiry\_Carroll**

**Zoning**



CC ~ Community Commercial



I ~ Industrial



R3 ~ Medium Density Residential



Tax Parcels



**From:** DAVID PYATT <dpyatt2@verizon.net>  
**Sent:** Saturday, March 12, 2022 4:03 PM  
**To:** Larry Hushour; Jason Poirier; John Breeding; Roxanne Hemphill; billbutts@hotmail.com; Karl Munder; Scott Sirchio; dickinson1law@gmail.com; martina.hatley@gmail.com; reedpa01@yahoo.com; Stephen Domotor; Lynne Galletti  
**Cc:** tmccarron@semmes.com  
**Subject:** More on Dr. O'Brien's Request

Steps need to be taken to address this request (and others) for Community Commercial Zoning for future Master Plans. In 2013/2014 Dr. O'Brien had 250 people sign letters, quite a few attended the Public Hearing with his numerous supporters and consultants, and just took up hours of time. Many of the supporters were business related and came from all over. The Planning Commission has done a lot of good work on Mixed Use Zoning for Center Street (Beck Property). There is the need for a zoning change to bridge the schism from residential to the most restrictive, community commercial. I watched the March 10th Master Plan delayed cast on facebook. It's encouraging an ordinance is being worked on to look into bridging CC and Residential. But it's needed for consistency.

## Details of Efforts During Past Master Plan

Dr. O'Brien commissioned an Engineering Land Use Consultant (David Thayler), P.E. to prepare "Dedicated Restrictive Covenants" With Adjoining Property Owners. These Agreements (which as our Town Attorney Tom McCarron pointed out have no legal standing) were signed and notarized and have duped the adjoining neighbors into the expectation that commercial zoning would have a much softer impact on their adjoining usage. **I just uncovered this thick binder of material when I went through some boxes. I think it bears to mind the primary concern I outlined in my previous e-mail, but with a little more filler.**

These Restricted Covenant Agreement documents appeared to be at first blush very comprehensive, and David Thayler, who came to my house to speak in 2011/12, was a very charming and knowledgeable expert. I recently looked up his web page, and he indeed has an impressive background. I was also a PE, and there is a code of ethics with some enforceability, but it is nowhere as extreme as for an attorney. I don't believe a reputable attorney would risk significant ethical charges or even possible disbarment to do this chore. Frankly, if I had not been an engineer with extensive planning experience, I would probably gone along with this concept. These agreements were dismissed almost immediately by as totally ineffective by both Town Staff and Mr. McCarron.

A second key point is that Mr. James Fry of Frall Developer and owner of the Post Office (Post Offices are leased) is a savvy developer (or presumably after having his attorneys look over this flaky 2011 agreement) yet co-signed it and formed this "fictitious handshake" agreement. He was either chuckling to himself or had a hidden agenda. The Post Office property itself is Zoned Residential, and once it is obsolete--there was an article within the last year in the *Messenger* Newspaper stating that there was consideration of a Mount Airy post office in a nearby shopping center--there is likely increasing pressure from a very powerful land developer to have the O'Brien property zoned Commercial and thus be used as a basis for the Post Office property being zoned Commercial at the appropriate time. It reverts to residential when the new Post Office would open and the existing one closes. **I believe the strategy in the future would be to try and use the master plan (the only one that comes to mind) plan to get Commercial Zoning. The structure would be there, and it**

would be tempting to turn it into a store. It is a clever ploy and might have been successful under current zoning if O'Brien's request is granted in 2013. It seems less unlikely now based on this new use of mixed zoning and having a better understanding on integration. The Town should have a copy of the special exception request of circa 1991 from Frall Developers.

Yet these "Restrictive Covenants" (and I now have a complete copy saved) convinced many Park Avenue Residents that they would have little consequences if Commercial Zoning were granted to Dr. O'Brien. A total of six neighbors signed these documents, one of them Mr. Fry. Some have since moved away.

There were 250 letters of support included, but the Town Staff (I was still PC liaison then) couldn't assess whether the people solicited really understood the nature of what they were agreeing to. My Council term ended in 2012, and I participated in the final Master Plan as a Commenter.

While Mr. Thayler was speaking to me as a resident, he pointed out that a drug store might be available for Seniors to walk to, and how that would be advantageous to the community. Yet Mr. O'Brien's property is deceptively small (32,000 square ft), and I followed this up informally with a local developer, Mr. Frank Iliano. Mr. Iliano was well aware of the Walgreen foray but was a bit sheepish about telling me about the information in confidence yet said it would take at least 5 properties, but the total project had a budget of \$5 million (ten years ago) and would have only allowed \$2.5 million for land acquisition.

I also asked around the neighborhood, and some agreed that granting commercial for their homes was on the table prior to the 2013 Town Council turning down O'Brien's request. It's a delicate situation since nobody wants to admit that they were taken in by this, or that they would have jumped at the chance to significantly increase their property value.

Dr. O'Brien has a lot invested in his property over the years with buildings added, and Commercial Zoning may be the most bang for the buck. However, a 35,000 sq ft property is extremely limited in what could be placed there--I'm thinking 20,000 sq ft of usable space--there are very steep grades, and there is too close a proximity to Route 27 and Park Avenue. The State Highway property would limit access from Route 27. A Gas and Go would need a much bigger footprint. Even a pharmacy would be a tight fit. For now, this Zoning request must be denied since it potentially opens so many doors with unknown consequences, it may not even achieve Dr O'Brien's elusive goals--at today's exploding real estate residential prices, he can sell at a nice profit if he chooses as residential or as Neighborhood Professional. But the potential to harm the community is large.

Dave Pyatt  
705 Park Avenue

Veterinarian Dr. O'Brien has been trying for over a decade to have his property on Park Avenue, which currently has a long-standing special exemption of a Veterinarian Practice (starting in 1987) that reverts to residential when his practice ends. It is my understanding that he has submitted a request for this current Master Plan for Commercial. This could allow almost anything including a gas and go or convenience store. Prior to the 2013 Master Plan Adoption, Dr. O'Brien engaged in an extensive lobbying effort with neighbors and engaged in conversations with a pharmacy to build a drug store. This would have required roughly 5 or more properties on his side of Park Avenue to also apply for a similar commercial rezoning. Rezoning the O'Brien property (about 32,000 square ft) itself does not appear to be that financially beneficial over the recently soaring residential costs in Mount Airy to justify this action. It better serves the interest of commercial developers encroaching into a residential area. The request was denied in 2013.

A general and consistent belief from professional planners, past and present, is that giving Dr. O'Brien a commercial category would completely alter the long standing and historical residential nature of Park Avenue as a tree-lined Gateway to the Town. This is exactly what the Master Plan process should not do (often called Spot Zoning), but on the other hand it is the only real legal opportunity for the property owner to try and change the zoning designation.

I have a limited participation in the new Senior Task force. It is my understanding that affordable housing is the number one concern for Seniors. Many seniors in Wildwood are considering moving away because the real estate prices have climbed, and they can sell their houses and get a larger home further north or generally away from Mount Airy. The Park Avenue and Wildwood houses are generally comparable in price. Consequently, the rezoning and potential loss of moderate priced residential units would worsen, and we could have an exodus of long-time citizens, many of them Mount Airy natives.

The current Planning Commission, who well remember this effort in 2013, appeared to take a rather dim view of this. However, the Council and some new Planning Commission is somewhat different from 2013 and might be swayed by Dr. O'Brien's arguments based on what was said and reported 10 years ago. The Town has tried several times to propose zoning (Neighborhood Professional) allowing some limited commercial usage to Dr. O'Brien--it is sympathetic to his construction and erection of expensive structures--but so far has resisted the draconian step of allowing Community Commercial. But this is the only Zoning Dr. O'Brien appears to consider suitable.

Most Park Avenue residents are long-term ones and for the most part not politically involved. A few are in their 90s. Others are working people with very busy schedules (often with two household members employed with many kids and pets). I sense the Master Plan process also intimidates them even if they had the time, and they are uncomfortable with attending lengthy and often tedious meetings--and speaking against professional lawyers, consultants, and land use experts who make several hundred

dollars an hour. But don't believe this lack of passion indicates that they are prepared to give up their long-time homes in a tedious legal process.

Dave Pyatt  
705 Park Avenue



LARRY HUSHOUR  
*Mayor*

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JASON M. POIRIER  
*Council President*



*Council Members*  
PAMELA M. REED  
*Secretary*

KARL L. MUNDER  
LYNNE P. GALLETTI  
STEPHEN L. DOMOTOR

March 8, 2022

Re: Rezoning request for 806 Park Avenue

Dear Homeowner:

On Monday, March 28th at 7:00 p.m. you are invited to attend a public meeting for the above-referenced properties to be held at Town Hall at the Planning Commission's regularly scheduled meeting. This will be your opportunity to provide public comment to the Planning Commission about these rezoning requests.

If you cannot attend but would like to make a comment or have questions, please contact John Breeding, Director of Planning and Zoning at [jbreeding@mountairymd.gov](mailto:jbreeding@mountairymd.gov) or 301-829-1424.

Sincerely,

Roxanne Hemphill  
Chairperson Planning Commission

John Breeding  
Director of Planning & Zoning

MICHAEL & BARBARA HAIGWOOD  
1808 SOUTH MAIN STREET  
MOUNT AIRY, MD 21771

TAX MAP:090E PARCEL:1386

MABEL GUY L/E ETAL  
1902 SOUTH MAIN STREET  
MOUNT AIRY, MD 21771

TAX MAP:090E PARCEL:1385

CLARK MOON II  
1904 SOUTH MAIN STREET  
MOUNT AIRY, MD 21771

TAX MAP:090E PARCEL:1384

TOOD & BARBARA KEITH  
1906 SOUTH MAIN STREET  
MOUNT AIRY, MD 21771

TAX MAP:090E PARCEL:1383